

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

INGINIO HERNANDEZ,)	3:13-cv-00083-MMD-WGC
)	
Plaintiff,)	<u>MINUTES OF THE COURT</u>
)	
vs.)	May 1, 2014
)	
RENEE BAKER, et al.,)	
)	
Defendants)	
)	

PRESENT: THE HONORABLE WILLIAM G. COBB, U.S. MAGISTRATE JUDGE

DEPUTY CLERK: KATIE LYNN OGDEN REPORTER: NONE APPEARING

COUNSEL FOR PLAINTIFF(S): NONE APPEARING

COUNSEL FOR DEFENDANT(S): NONE APPEARING

MINUTE ORDER IN CHAMBERS:

Before the court is Plaintiff's "Motion be Brought Yea Good Faithful by the Cause for Identifying the Unserved Defendants Requesting Issuance of a Summons and Specifying a Full name Upon," logged in by the court as a motion for issuance of summons. (Doc. # 51.) Plaintiff seeks to serve Michael Deweese, Gloria Carpenter, Kelly Lyon (whom he identifies as nurses) and Officer Lyon. (*Id.* at 1.)

Defendants have filed a limited opposition to Plaintiff's motion. (Doc. # 52.) Defendants state that Plaintiff filed his motion before Defendants' counsel had the opportunity to confer with Plaintiff regarding the correct identity for the defendants named as "Lying" (as this court directed at the March 14, 2014, status conference (Doc. # 50)). Nevertheless, Defendants state their "Counsel will accept representation for Kelly Lyon and will provide the last known address under seal for Correctional Officer Lyon. It appears Plaintiff intended to name them initially but misspelled the last name." (*Id.* at 3:2-6.) In that regard, the court notes the First Amended Complaint (Doc. #11) does make reference to "Officer Lying" who is a correctional officer with ESP (*id.* at 2, ¶ 5) and "Mrs. Lying" who is a nurse with ESP (*id.* at 4, ¶ 13).

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However, Defendants' counsel next states "Defendants will accept service of Kelly Lyon and submit the last known address for Correctional Officer Lyon once Plaintiff has filed an amended complaint...naming them as Defendants." (*Id.* at 3:10-12.)¹ Because, as noted above, both of these individuals were previously named as Defendants in the First Amended Complaint, there is no reason to wait for the disposition of the proposed second amended complaint to address service as Defendants suggest. (Doc. # 52 at 2.)

Defendants shall file a supplemental notice of acceptance as to Defendants Kelly Lyon and Correctional Officer Lyon **within seven (7) days** of the date of this Order. If counsel is not authorized to accept service on behalf of Nurse Kelly Lyon and/or Correctional Officer Lyon, counsel shall note such on the notice and shall file the last known addresses of the Defendant for whom counsel cannot accept service under seal. For the time being, Plaintiff's motion for service as to Correctional Officer Lyon is **DEFERRED** pending the filing of Defendants' notice.

As to Plaintiff's request for issuance of summons as to defendants Gloria Carpenter and Michael Deweese, these individuals were not named as Defendants in either Plaintiff's original Complaint (Doc. # 1-1) or in his First Amended Complaint (Doc. # 11). It appears Plaintiff is attempting to name them as defendants in his proposed second amended complaint (Docs. # 54, 55). However, because they are not defendants in the current posture of this case, service of process upon them at this time would be inappropriate. Therefore, Plaintiff's motion for service as to Michael Deweese and Gloria Carpenter (Doc. # 51) is **DENIED**.²

The clerk is directed to coordinate a status conference on this case to discuss these and other issues.

IT IS SO ORDERED.

LANCE S. WILSON, CLERK

¹ At a hearing on March 14, 2013, Defendants counsel was directed to confer with Plaintiff about the identity of the person known as "Officer Lying or Nurse Lying.." (Doc. # 50.) After a good faith effort to identify these individuals the Attorney General's office was to file a notice within 30 days whether Defendants' counsel could accept service for or on behalf of this individual. It was only if Defendants could not accept service for Defendant(s) Lying that Plaintiff would have to undertake efforts to serve this individual or these individuals if there are more than one NDOC employee with that name. Presumably Defendants' Limited Opposition (Doc. # 52) constitutes the "notice" the court had contemplated Defendants would be filing.

² Defendants characterize Plaintiff's motion as one wherein Plaintiff seeks "to substitute Gloria Carpenter and Michael Deweese in for Doe Defendants" (Doc. # 52 at 2.) The court does not interpret Plaintiff's motion similarly as nowhere in Doc. # 51 does he seek to substitute the names of these individuals for fictitious party ("Doe") defendants. However, regardless of how Plaintiff's motion is interpreted—which the court admits is a challenging task—no summons will be issued as to these individuals.

By: _____
Deputy Clerk